

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

August 08, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

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No. 94-2269

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**STATE OF WISCONSIN
and CITY OF MILWAUKEE,**

Plaintiffs-Respondents,

v.

BRADFORD LESCHER,

Appellant,

**MISSIONARIES TO THE PREBORN,
ET AL.,**

Defendants.

APPEAL from an order of the circuit court for Milwaukee County:
ROBERT W. LANDRY, Reserve Judge. *Affirmed.*

SULLIVAN, J.¹ Once again, this court is confronted by another of a seemingly endless trickle of cases emanating out of protests at abortion clinics

¹ This appeal is decided by one judge, pursuant to § 752.31(2), STATS.

located in Milwaukee County. The issues presented are not new; neither is the result. Bradford Lescher appeals from an order issuing a remedial contempt citation for violating a permanent injunction that was issued on December 10, 1992, enjoining activities of certain abortion protestors at medical clinics throughout the City of Milwaukee. The injunction prohibits certain named individuals and anyone acting "in concert" with those individuals from engaging in particular activities at medical clinics. Lescher claims that the trial court erred in issuing a contempt order against him because: (1) the trial court did not "understand the proper legal definition of 'in concert', and did not correctly apply the proper legal definition to the facts;" and (2) the evidence is insufficient to support the trial court's finding that Lescher acted in concert with a named defendant to the injunction. This court rejects both of Lescher's arguments and affirms the order.

I. BACKGROUND

On December 10, 1992, a Milwaukee trial court issued a permanent injunction order prohibiting certain individuals, and anyone acting in concert with those individuals, from engaging in certain activities at medical clinics that provide abortions. On April 15, 1993, the trial court filed an order modifying the caption of its December order, to specifically list by name thirty-eight individuals subject to the injunction. Stephen Gaenslen was among the thirty-eight individuals specifically named in the April injunction order. The injunctions prohibited the named defendants, and anyone acting in concert with a named defendant, from entering a twenty-five-foot buffer zone around clinic entrances and a "floating" ten-foot personal zone around individuals seeking access to the clinics.

On November 6, 1993, Lescher was present at the Wisconsin Women's Health Center during an abortion protest. A motion for contempt was filed against Lescher on December 7, 1993, and an evidentiary hearing was held on May 14, 1994, which provided the following evidence.

Witness Katrina Haas testified that she knew Lescher because he was a frequent protester at abortion clinics and that Lescher was present at the Health Center on the morning of November 6, 1993. She further testified that she knew Gaenslen, knew that he was a named defendant on the permanent

injunction, and saw Gaenslen protesting at the Health Center on November 6. She testified that at approximately 10:45 a.m., she saw Lescher speak with Gaenslen, although she did not hear the substance of the conversation. Within minutes after the conversation concluded, she testified that she saw Lescher block a car from entering the clinic parking lot, and that she saw and heard Lescher: (1) approach within two to three feet of a woman leaving a blocked car; and (2) yell, "Don't let those satanic bastards murder your child." Further, a video tape was presented to the court that showed Lescher and Gaenslen standing next to each other and Gaenslen turning his face towards Lescher. Gaenslen and Lescher both testified that they did not know each other and that neither planned any activity with each other on the day of the protest.

At the conclusion of the hearing, the trial court determined that Lescher had violated the injunction by acting in concert with a named defendant to the permanent injunction. The trial court made the following findings of fact in support of its conclusion: (1) Gaenslen was a named defendant to the injunction; (2) Gaenslen and Lescher were both protesting at the clinic on November 6, 1993; (3) Lescher was aware Gaenslen was at the clinic; (4) Lescher and Gaenslen were two feet apart as shown on the evidentiary video; (5) on the video Gaenslen turned his face towards Lescher; and (6) Lescher entered within the prohibited twenty-five feet of the Center's parking lot and within ten feet of one of the patients. The trial court ordered a remedial sanction of \$500, gave Lescher ten days to pay the \$500, or take an oath before the court indicating Lescher would not violate the permanent injunction. Additionally, if he either failed to pay the \$500 or failed to take an oath with the ten days, the trial would place him in the House of Corrections for twenty days. Lescher now appeals.

II. DISCUSSION

1. *Acting In Concert.*

Lescher claims that the trial court did not “understand the proper legal definition of ‘in concert’ and did not correctly apply the proper legal definition to the facts.” This court disagrees with Lescher. Whether the proper legal definition was utilized is a legal conclusion that this court reviews *de novo*. See *First Nat'l Leasing Corp. v. City of Madison*, 81 Wis.2d 205, 208, 260 N.W.2d 251, 253 (1977).

Lescher argues that in order for an unnamed defendant to be found to be acting “in concert” with a named defendant to the injunction, the trial court had to make a specific finding that the named defendant violated the injunction. This court totally disagrees. As the City and State properly point out in their brief, if such a definition was employed, “any groups bound on violating the rights of others ... [could] effectively defeat the power of the courts' by continually changing the persons acting against the injunction.” (Citation omitted; material in brackets added.) Accordingly, this court concludes that all that is required to find a party acting in concert with a named party to an injunction is a finding that the parties collectively acted to achieve a common goal. See *Planned Parenthood Ass'n of Cincinnati, Inc. v. Project Jericho*, 556 N.E.2d 157, 163 (1990). The trial court in this case applied the appropriate definition and there was no error.

2. *Insufficient trial court findings?*

Lescher next argues that trial court findings were insufficient to support a conclusion that he acted in concert with Gaenslen, a named defendant to the injunction. The record belies this argument. Whether a party is acting in concert with another person is a question of fact to be determined by the trial court, and we will not overturn such a finding of fact unless it is clearly erroneous. See *Dalton v. Meister*, 84 Wis.2d 303, 312, 267 N.W.2d 326, 331 (1978); § 805.17(2), STATS.

None of the trial court's findings of fact are clearly erroneous. The trial court found that: (1) Gaenslen was a named defendant to the injunction; (2) Gaenslen and Lescher were both protesting at the clinic on November 6, 1993; (3) Lescher was aware Gaenslen was at the clinic; (4) Lescher and Gaenslen were two feet apart as shown on the evidentiary video; (5) on the video Gaenslen turned his face towards Lescher; and (6) Lescher entered within the prohibited twenty-five feet of the Center's parking lot and within ten feet of one of the patients. The trial court's findings are sufficient to uphold the order.

Further, any conflict in the testimony of the witnesses is a question of credibility for the finder of fact. *Gehr v. City of Sheboygan*, 81 Wis.2d 117, 122, 260 N.W.2d 30, 33 (1977); *Milbauer v. Transport Employees' Mut. Benefit Soc'y*, 56 Wis.2d 860, 865, 203 N.W.2d 135, 138 (1973). An appellate court will not substitute its judgment for that of the trier of fact unless the fact finder relied on evidence that was "inherently or patently incredible—that kind of evidence which conflicts with the laws of nature or with fully-established or conceded facts." *State v. Tarantino*, 157 Wis.2d 199, 218, 458 N.W.2d 582, 590 (Ct. App. 1990). None of the testimony used in support of the trial court's findings is patently incredible; hence, this court will not substitute its judgment for that of the trial court. Accordingly, this court rejects Lescher's arguments and affirms the order.

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.